Sangka bin Chuka & Ors v Pentadbir Tanah Daerah Mersing Johor & Ors

HIGH COURT (JOHOR BAHRU) — JUDICIAL REVIEW APPLICATION NO 25–27–02 OF 2012
ABDUL RAHMAN SEBLI J
25 JUNE 2014

Civil Procedure — Judicial review — Application for — Review against order to quash decision to evict land — Whether land administrator had right to issue notice — Eviction notice pasted on tree — Whether eviction targeted on group of orang asli — Proper mode of commencing hearing — Whether by way of judicial review

In this application, the applicant and 118 other *orang asli* applicants applied for, inter alia, an order to quash the decision of the first respondent who had issued an eviction notice dated 17 January 2012 by pasting it on a tree. They claim that the first respondent had no right to issue the notice as the area in and around the Endau-Rompin National Park was their ancestral land and they have customary rights over the land. The applicants alleged that the notice was targeted at them although it was not directed at them specifically since it was addressed to 'SESIAPA YANG BERKENAAN' (to whom it may concern). At the commencement of the hearing, both senior federal counsel for the respective respondents raised a preliminary objection on the mode of proceeding adopted by the applicants. It was submitted that the application for judicial review was frivolous and vexatious as the applicants have not exhausted the remedy under s 418 of the National Land Code ('NLC').

Held, dismissing the appeal with costs:

(1) The fact that an appeal procedure was available does not mean that the applicants can have no recourse to judicial review. That option would always be available and there was no requirement for the applicants to exhaust the remedy under s 418 of the NLC before resorting to O 53 of the Rules of Court 2012 (see para 6).

(2) The court was unable to find anything exceptional about the applicants' case nor 'very exceptional circumstances'. The dispute was over the decision of the first respondent in issuing the eviction order. There was nothing unusual about this and the remedy lied in appealing against the decision. The right of appeal was a right accorded by statute, which meant that the High Court had no discretion not to hear the appeal on the merits. In contrast judicial review is always at the discretion of the court (see para 12).

(3) As for the question of natural justice, it is only in 'appropriate cases' of serious breach that certiorari would issue and this was not such a case. It has not even been shown that the applicants' claim of customary rights over any part of the Endau-Rompin Forest Reserve, which has been gazetted as a National Park was beyond dispute. In any case, the dispute could be resolved through the appeal procedure (see para 13).

(4) The real reason why the applicants resorted to the judicial review process was to circumvent s 418 of the NLC which only allows for an appeal to be lodged against the Land Administrator of Mersing. The move was a tactical maneuver by the applicants to bring in the other respondents as parties which otherwise they would not be able to do if they were to adopt the appeal procedure under s 418 of the NLC (see para 19).

[Bahasa Malaysia summary

Dalam permohonan ini, pemohon dan 118 pemohon orang asli yang lain memohon untuk, antara lain, perintah untuk membatalkan keputusan responden pertama yang mengeluarkan notis pengusiran bertarikh 17 Januari 2012 dengan melekatkannya di pokok. Mereka mendakwa bahawa responden pertama tidak mempunyai hak untuk mengeluarkan notis kerana kawasan dan sekeliling Taman Negara Endau-Rompin adalah tanah nenek moyang mereka dan mereka mempunyai hak adat ke atas tanah tersebut. Pemohon-pemohon mendakwa bahawa notis ditujukan pada mereka walaupun ia tidak ditujukan kepada mereka secara spesifik memandangkan ia ditujukan kepada 'SESIAPA YANG BERKENAAN'. Pada permulaan pendengaran, kedua-dua peguam kanan persekutuan membangkitkan bantahan awalan atas cara prosiding yang digunakan oleh pemohon-pemohon. Ia dihujahkan bahawa permohonan untuk semakan kehakiman adalah remeh dan menyusahkan memandangkan pemohon-pemohon tidak mengunakan remedi di bawah s 418 Kanun Tanah Negara ('KTN').

Diputuskan, menolak rayuan dengan kos:

(1) Fakta bahawa adanya prosedur rayuan tidak bermaksud bahawa pemohon-pemohon tidak mempunyai remedi kepada semakan kehakiman. Opsyen ini akan sentiasa ada dan tidak ada keperluan untuk pemohon-pemohon untuk mengguna remedi di bawah s 418 KTN sebelum merujuk kepada A 53 Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 6).

(2) Mahkamah tidak dapat menemui apa-apa yang luar biasa mengenai kes pemohon-pemohon ataupun 'very exceptional circumstances'. Pertikaian adalah ke atas keputusan responden pertama dalam mengeluarkan perintah pengusiran. Tidak terdapat apa-apa yang luar biasa mengenai ini dan remedi adalah dalam merayu terhadap keputusan tersebut. Hak untuk merayu adalah hak yang diberikan oleh statut, yang

bermaksud bahawa Mahkamah Tinggi tidak mempunyai budi bicara untuk tidak mendengar rayuan atas merit. Sebaliknya semakan kehakiman sentiasa atas budi bicara mahkamah (lihat perenggan 12).

(3) Mengenai persoalan keadilan semula jadi, ia hanya dalam 'appropriate cases' kemungkiran serius bahawa *certiorari* akan dikeluarkan dan ini bukan kes sedemikian. Ia tidak ditunjukkan bahawa tuntutan pemohon-pemohon terhadap hak adat ke atas mana-mana bahagian Hutan Simpan Endau-Rompin, yang telah diwartakan sebagai Taman Negara adalah melampaui pertikaian. Walau bagaimanapun, pertikaian boleh diselesaikan melalui prosedur rayuan (lihat perenggan 13).

(4) Alasan sebenarnya mengapa pemohon-pemohon merujuk kepada proses semakan kehakiman adalah untuk memintas s 418 KTN yang hanya membenarkan untuk rayuan dimasukkan terhadap Pentadbir Tanah Mersing. Langkah ini adalah pergerakan taktikal oleh pemohon-pemohon untuk memasukkan responden-responden lain sebagai pihak-pihak yang mana jika tidak mereka tidak dapat berbuat sedemikian jika mereka menggunakan prosedur rayuan di bawah s 418 KTN (lihat perenggan 19).]

Notes

For cases on application for, see 2(3) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 5318–5321.

Cases referred to

Ahmad Jefri bin Mohd @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145; [2010] 5 CLJ 865, FC (refd)

Government of Malaysia & Anor v Jagdish Singh [1987] 2 MLJ 185; [1987] 1 CLJ 451, SC (refd)

Khoo Ah Imm @ Chang Bee Khiam & Ors v Datuk Bandar Kuala Lumpur & Anor [1997] 2 MLJ 602, CA (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [199] 3 MLJ 1; [1999] 3 CLJ 65, FC (refd)

Preston v IRC [1985] 2 All ER 327; [1985] AC 835, HL (refd)

Regina v Chief Constable of The Merseyside Police Ex Parte Calveley & Others [1986] 1 QB 424, CA (refd)

Ringgit Exotica Sdn Bhd v Pengarah Tanah & Galian Selangor & Ors [2014] 8 MLJ 111, HC (refd)

Robin Tan Pang Heng @ Muhammad Rizal bin Abdullah (suing as Public officer at Penang Turf Club) v Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2011] 2 MLJ 457; [2010] 9 CLJ 505, FC (refd)

Legislation referred to

Federal Constitution art 13
Land Acquisition Act 1960
National Land Code s 418 , 418(2), (3)
Rules of Court 2012 O 53, O 53 rr 2(2), 3, 3(6), O 55A r 1

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Shahrizal bin Shaari (Senior Federal Counsel of the State Legal Advisor's Office) for the first, second, third and fifth respondents.
Nurul Farhana bt Khalid (Senior Federal Counsel of the Attorney General's Chambers) for the fourth and sixth respondents.

Abdul Rahman Sebli J:

[1] The *orang asli* of the Jakun tribe have very unique and distinctive names and Sangka bin Chuka is one such name. In this application he and the 118 other *orang asli* applicants are applying, inter alia, for an order to quash the decision of the Land Administrator Mersing ('the first respondent') who had issued an eviction notice dated 17 January 2012 by pasting it on a tree. They claim that the first respondent had no right to issue the notice as the area in and around the Endau-Rompin National Park is their ancestral land and they have customary rights over the land. The notice is couched in the following terms:

> KEPADA SESIAPA YANG BERKENAAN,
>
> *NOTIS PERINTAH SUPAYA KELUAR DARIPADA KAWASAN TAMAN NEGARA JOHOR ENDAU-ROMPIN (PETA)*
>
> Merujuk perkara diatas, adalah dengan ini dimaklumkan bahawa tuan/puan didapati telah melakukan pencerobohan atas tanah kerajaan sebagaimana diatas. Ini bermakna tuan/puan telah melakukan satu kesalahan dibawah Seksyen 425 (1) dan (1a)Kanun Tanah Negara (*KTN*) dan boleh diambil tindakan dibawah seksyen terebut yang jika disabit kesalahan boleh dikenakan denda tidak melebihi *RM10,000.00 (RM SEPULUH RIBU SAHAJA)* atau tidak melebihi 1 tahun (SATU TAHUN) penjara ATAU *kedua-duanya sekali*.
>
> Tuan/Puan adalah dinasihatkan supaya memberhentikan apa-apa bentuk pencerobohan serta keluar meninggalkan tanah tersebut dalam tempoh *1 HARI* dari tarikh surat ini dengan membuka sendiri segala binaan/bangsal/bangunan/pondok/pancang bot/jeti atau apa-apa jua bentuk tanaman yang telah ditanam di atas tanah.
>
> 2. Jika arahan ini tidak dipatuhi, tindakan penguatkuasaan ke atas bangunan atau tanaman tuan/puan akan dilaksanakan bagaimana peruntukan dibawah *Seksyen 425 (A) Kanun Tanah Negara (KTN)*. Pentadbiran ini akan meroboh/menghapus atau memusnahkan apa-apa bangunan atau tanaman serta tuan/puan akan didakwa dan dihadapkan ke mahkamah serta dikenakan denda sebagaimana tersebut diatas. (Emphasis added.)

[2] Very terse words indeed, coupled with a veiled threat to incarcerate the *orang asli* for one year if they did not leave the area within 24 hours. The applicants allege that the notice was targeted at them although it was not directed at them specifically. It was addressed generally to 'SESIAPA YANG BERKENAAN' (To whom it may concern). At the commencement of the hearing both senior federal counsel for the respective respondents raised a preliminary objection on the mode of proceeding adopted by the applicants. It was submitted that the application for judicial review is frivolous and vexatious as the applicants have not exhausted the remedy under s 418 of the National Land Code ('the Land Code'). Section 418 of the Land Code provides as follows:

> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

[3] By virtue of sub-s (2) above the provision must be read together with O 55A r 1 of the Rules of Court 2012 ('the Rules of Court') which stipulates as follows:

> (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court *such appeal shall be made to the High Court* in the State where the decision was given by way of an originating summons setting out the grounds of appeal and supported by an affidavit, and if the Court so directs at the hearing of the appeal, by way of oral evidence. (Emphasis added.)

[4] Thus the procedure prescribed by law for challenging any decision of the state land authority under the Land Code is for the aggrieved party to appeal to the High Court by way of an originating summons. There is no dispute that the eviction order was a decision within the meaning of sub-s 418(3) of the Land Code. Other than to state the grounds of appeal, the aggrieved party is required to support his appeal by an affidavit and the court may direct evidence to be adduced orally at the hearing.

[5] This it will be noted is a special procedure prescribed by a special statute for a specific purpose unlike O 53 of the Rules of Court (under which the present application is made) which is a procedure prescribed by a statute of general application and not intended to cater specifically to the kind of situation envisaged by s 418 of the Land Code, namely to deal with disputes

involving decisions of the state land authority under the Act. Therefore the maxim *generalia specialibus non derogant* (general things do not derogate from special things) must be kept in mind when dealing with an application of this nature.

[6] In my view, having regard to the authorities which I shall refer to in a moment the question is not whether the applicants should exhaust the remedy under s 418 of the Land Code as contended by the senior federal counsel but whether this is a fit and proper case for the court to exercise its discretionary judicial review jurisdiction, given the fact that an alternative remedy is open to the applicants. The fact that an appeal procedure is available does not mean that the applicants can have no recourse to judicial review. That option is always available and there is no requirement for the applicants to exhaust the remedy under s 418 of the Land Code before resorting to O 53 of the Rules of Court.

[7] However, there is an important caveat before the judicial review jurisdiction could be exercised and it is the requirement to show 'very exceptional circumstances':see the Supreme Court decision in *Government of Malaysia & Anor v Jagdish Singh* [1987] 2 MLJ 185; [1987] 1 CLJ 451 where Hashim Yeop A Sani SCJ (as he then was) in delivering the judgment of the court and after referring to various authorities held at p 189:

> A clear principle is reiterated here ie, it is not a rigid rule that whenever there is an appeal procedure available to the applicant, he should be denied judicial review. Judicial review is always at the discretion of the court *but where there is another avenue or remedy open to the applicant, it will only be exercised in very exceptional circumstances*.
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> In *Re Preston* was a tax case. It was quite clear from the speeches of their Lordships in the House of Lords that the Inland Revenue Commissioners were not immune from the process of judicial review. But what was also made clear is that *the remedy by way of judicial review is not to be available where an alternative remedy exists except in very exceptional cases*. (Emphasis added.)

[8] The court then went on to answer the question posed for determination by holding that where there is an appeal provision available certiorari should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice. The House of Lords decision in *Preston v IRC* [1985] 2 All ER 327; [1985] AC 835 cited by the Supreme Court is particularly relevant where at p 862 Lord Templeman said:

> Judicial review process should not be allowed to supplant the normal statutory appeal procedure (but) *the present circumstances are exceptional in that the appeal procedure provided by s 462 cannot begin to operate* if the conduct of the commissioners in initiating proceedings under s 460 (which relates to the

cancellation of tax advantages) was unlawful. (Emphasis added.)

[9] Obviously the reason why the House of Lords considered the case to be exceptional was because the appeal procedure could not begin to operate due to the unlawfulness of the commissioner's conduct. The applicants in the present case are not faced with such impediment. In *Khoo Ah Imm @ Chang Bee Khiam & Ors v Datuk Bandar Kuala Lumpur & Anor* [1997] 2 MLJ 602 Gopal Sri Ram JCA (as he then was) relying on *Jagdish Singh* said at p 609:

> One of the grounds on which the remedy of certiorari may be withheld is where the applicant is able to obtain better or at least equally efficacious relief either in other proceedings or at an alternative forum. Sometimes the alternative remedy is given by statute. See, *Government of Malaysia & Anor v Jagdish Singh* [1987] 2 MLJ 183; [1987] 1 CLJ 415.

[10] There are two other decisions that were decided along the same line: *Robin Tan Pang Heng @ Muhammad Rizal bin Abdullah (suing as Public officer at Penang Turf Club) v Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [2011] 2 MLJ 457; [2010] 9 CLJ 505 (FC) and *Regina v Chief Constable of The Merseyside Police Ex Parte Calveley & Others* [1986] 1 QB 424. In the latter decision it was held by the English Court of Appeal that:

> ... the judicial review jurisdiction would not normally be exercised where there was an alternative remedy by way of appeal, *save in exceptional circumstances*; that the speed of the alternative procedure, whether it was as convenient and whether the matter depended on some particular or technical knowledge available to the appellate body were all factors to be taken into account in considering the circumstances were exceptional. (Emphasis added.)

[11] Taking the decision in *Jagdish Singh* as the guiding principle the position of law is thus clear. Where there is another avenue open to the applicant (as opposed to a case where there is no such avenue), the court will only exercise its judicial review jurisdiction in very exceptional circumstances. Exceptional means 'unusual; not typical' see *Concise Oxford English Dictionary* (11th Ed). Very exceptional circumstances therefore means very unusual circumstances. It is a heavy burden to discharge. What amounts to very unusual circumstances must depend on the facts and circumstances of each case. As for the exercise of discretion it is axiomatic that the power must be exercised judiciously and not capriciously, least of all wantonly. Judiciously means done with sensible judgment and not on an unaccountable mood swing.

[12] The question in the present application is whether the applicants' case is such an exceptional case that judicial review is the more appropriate remedy rather than the alternative appeal avenue open to the applicants. On the facts I am unable to find anything exceptional about the applicants' case. Nor can I find 'very exceptional circumstances'. The dispute is over the decision of the

first respondent in issuing the eviction order. There is nothing unusual about this and the remedy lies in appealing against the decision. The right of appeal is a right accorded by statute, which means the High Court has no discretion not to hear the appeal on the merits. In contrast judicial review is always at the discretion of the court.

[13] It is not the applicants' case that the first respondent clearly lacked jurisdiction to issue the eviction order or that he had blatantly failed to perform some statutory duty. As for the question of natural justice, it is only in 'appropriate cases' of serious breach that certiorari would issue: *Jagdish Singh*. I do not find this to be such a case. It has not even been shown that the applicants' claim of customary rights over any part of the Endau-Rompin Forest Reserve, which has been *gazetted* as a National Park is beyond dispute. In any case the dispute can be resolved through the appeal procedure.

[14] Indeed it was conceded by counsel for the applicants that the applicants could have resorted to the appeal procedure under s 418 of the Land Code but that would mean, according to counsel, the applicants could only proceed against the first respondent and not against the other respondents. This is to state the obvious because the eviction order was a decision of the first respondent and not the other respondents. Therefore it is only against the decision of the first respondent that an appeal lies to the High Court. No appeal lies against the other respondents for the simple reason that they did not make the decision.

[15] It was further argued that the reliefs sought involve matters beyond the scope of s 418 of the Land Code and thus fit for disposal by way of judicial review. One example given is the prayer for injunction which the High Court would not have the power to grant if the applicants were to proceed by way of appeal. It was submitted that judicial review is the most appropriate remedy as the case involves a public law element and is a matter of public interest, citing *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [199] 3 MLJ 1; [1999] 3 CLJ 65; *Ringgit Exotica Sdn Bhd v Pengarah Tanah & Galian Selangor & Ors* [2014] 8 MLJ 111; *Ahmad Jefri bin Mohd @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2010] 5 CLJ 865.

[16] With due respect I do not see how these authorities could assist the applicants in the light of the authorities referred to earlier. The Federal Court decision in *Majlis Perbandaran Pulau Pinang* must be understood in its proper context. Most importantly it is not a dictum on the issue of 'very exceptional circumstances', an issue that was specifically dealt with by the Supreme Court in *Jagdish Singh*. The decision in *Majlis Perbandaran Pulau Pinang* no doubt provides a complete answer to the respondents' argument that the applicants

should have exhausted the appeal procedure under s 418 of the Land Code but does not answer the question whether the court should exercise its judicial review jurisdiction in all the circumstances of the present case.

[17] It must be noted that there is no conflict between the two apex court decisions as both recognise that judicial review is not barred by non-exercise of the internal appeal procedure except that in *Jagdish Singh* it was decided that where the judicial review jurisdiction is to be exercised, very exceptional circumstances must be shown. The question of one decision prevailing over the other does not arise.

[18] As for the reasons given by the applicants for their choice of process I do not find them to be valid reasons either. These reasons cannot by any stretch of the imagination be categorised as 'very exceptional circumstances', particularly the applicants' claim that their case involves a public law element and is a matter of public interest. If that were a factor to consider, invariably all disputes involving the *orang asli* will have to be dealt with by way of judicial review, thus rendering s 418 of the Land Code completely otiose, ie serving no practical purpose. That could not have been the result intended by Parliament when it prescribed the internal appeal procedure. Nor could it be said that Parliament had enacted s 418 of the Land Code in ignorance of O 53 of the Rules of Court. As is often said Parliament does not legislate in vain. Effect must therefore be given to the provision and not discarded willy nilly.

[19] I am inclined to think that the real reason why the applicants resorted to the judicial review process is to circumvent s 418 of the Land Code which only allows for an appeal to be lodged against the decision maker, in this case the Land Administrator Mersing. This is apparent from counsel's own submission. It seems to me that the move is a tactical manoeuvre by the applicants to bring in the other respondents as parties which otherwise they would not be able to do if they were to adopt the appeal procedure under s 418 of the Land Code.

[20] By the mode adopted by the applicants the other prayers against the other respondents are now getting a free ride so to speak on the back of the certiorari application without having to fulfill the strict requirements for the grant of leave under O 53 r 3 of the Rules of Court. Order 53 r 3(6) requires that an application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant. The applicants cannot place any reliance on O 53 r 2(2) of the Rules of Court as leave must first be obtained before the provision can be called in aid.

[21] Clearly the decision to issue the eviction order by the first respondent and the decision to *gazette* the Endau-Rompin forest area as a forest reserve by

A the fifth respondent for instance are two entirely different decisions made at two different points of time. The evidence shows that the area was *gazetted* as a forest reserve some 19 years ago. Therefore the prayer for mandamus (prayer 6) to compel the respondents to de-*gazette* any part of the forest reserve is obviously unsustainable in view of the limitation period, and this is on the B assumption that the plaintiffs have locus standi to commence and maintain the present action against the respondents.

[22] The irony is that although the applicants' discontent is with the first C respondent's decision, the prayers against the other respondents have assumed far greater importance and have far wider implication than the application to quash the eviction order itself. It includes an order for damages and for the applicants to be compensated for the acquisition of any part of the customary land as per art 13 of the Federal Constitution or under the Land Acquisition D Act 1960. It is not wrong to say that these prayers have overshadowed the certiorari application to the point of obliterating it.

[23] Counsel for the applicants pointed out, quite rightly in my view that the applicants would be compelled to file a separate suit for the declaratory and E injunctive reliefs (ie the other prayers) against the other respondents if they were to proceed by way of appeal to challenge the decision of the first respondent. That may be so but it does not make the applicants' case very exceptional.

F **[24]** Leaving aside the question of exceptional circumstances it is an abuse of process for the applicants to lump the other prayers together with the prayer for certiorari in order to bring in the other respondents as parties when they had nothing to do with the eviction order, the act that triggered the present G application. It is like casting the net wide enough so that every fish in the pond gets caught. It is wrong to drag in the other respondents, particularly the fourth and sixth respondents when there is no cause of action against them arising from the decision of the first respondent. Surely an abuse of the court process disentitles any applicant to the discretionary remedy.

H **[25]** It seems that of grave concern to the applicants is the order for them to get out of the Endau-Rompin National Park within 24 hours without being given the right to be heard. If I understand the argument correctly the point that counsel is trying to drive home is that the prospect of the applicants being I evicted within 24 hours or within any other specified time makes the circumstances very exceptional and that therefore this is a proper case for disposal by way of judicial review. But the fact is the eviction order has been stayed by mutual consent of the first, second, third and fifth respondents pending determination of the present application.

[26] In any case I do not think the existence of the eviction order has any bearing on the question whether the court should exercise its judicial review jurisdiction. There is nothing exceptional about the eviction order nor its effect. Clearly like any other eviction order, the consequences must follow the event, ie once the applicants' application is dismissed the eviction notice will take immediate effect unless further stay is granted. That, by the way, would also be the result if the applicants were to have proceeded by way of appeal under s 418 of the Code and lost. Thus whether the remedy is obtained by way of appeal or by way of judicial review, the end result will be the same. This again takes away the element of 'very exceptional circumstances' in the applicants' case.

[27] It is clear to me that the appeal procedure under s 418 of the Land Code provides a complete remedy to the applicants in that if their appeal were to be allowed, the eviction order would be set aside and rendered null and void and of no effect. That would be as good as having the decision quashed, which is the same remedy that the applicants are praying for in the present application. It cannot therefore be said that judicial review is the more efficacious remedy. The appeal procedure is equally efficacious. This has been held by the Court of Appeal in *Khoo Ah Imm & Ors* to be a ground for withholding judicial review.

[28] For all the reasons stated above I do not find this to be a suitable case for the exercise of the court's judicial review jurisdiction. Not because the applicants have no right to seek judicial review but because they have not shown very exceptional circumstances. In any event the merits of the case do not favour the applicants. From the affidavit evidence it is clear that the Endau-Rompin Forest Reserve does not encroach into their customary land areas. There is therefore no question of their having customary rights over the area covered by the eviction notice. In the circumstances the application is dismissed with costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad Noor